

OGC Has Reviewed

*Civ*  
*Legal Decisions*  
*(Memo of Law)*  
*JFW*  
22 March 1948

The Director

Assistant General Counsel

Supreme Court Opinion in the Cases of Chicago and Southern Air Lines, Inc. v. Waterman Steamship Corporation and Civil Aeronautics Board v. Waterman Steamship Corporation.

1. In the above cases the Supreme Court of the United States was considering the question as to whether certain orders of the Civil Aeronautics Board were subject to review. The opinion was rendered by Mr. Justice Jackson on 9 February 1948.

2. In sustaining the position of the lower court that it could not review such provisions of the order as resulted from Presidential direction, the Court stated:

"The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports neither are nor ought to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry."

3. The Court in the above case cited with approval the earlier case of United States v. Curtiss-Wright Export Corporation (299 U.S. 304, 1936) where the Supreme Court stated in

- 2 -

connection with the powers of the President that:

"He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results."

4. The above citations may be helpful should an attempt ever be made to force the Director to disclose confidential information against his will.

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